## UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROYAL MILE COMPANY, INC.,	)	
PAMELA LANG and COLE'S WEXFORD	)	
HOTEL, INC., on their own behalf and on	)	Case No. 2:10-cv-01609-JFC
behalf of all others similarly situated,	)	
•	)	Honorable Joy Flowers Conti
Plaintiffs,	)	
	)	
v.	)	
	)	
UPMC and HIGHMARK INC.,	)	
	)	
Defendants.		

## HIGHMARK INC.'S MOTION FOR LEAVE TO FILE A SUR-REPLY IN FURTHER OPPOSITION TO ROYAL MILE PLAINTIFFS' MOTION TO WITHDRAW PRELIMINARY APPROVAL OF SETTLEMENT

Highmark Inc. respectfully moves for leave to file a sur-reply in response to the Royal Mile plaintiffs' proposed reply in support of their motion to withdraw from the settlement. Dkt. No. 149-1. The grounds for this motion are as follows:

- 1. On January 18, 2013, plaintiffs filed their Motion to Withdraw Motion for Preliminary Approval of Settlement, Preliminary Certification of the Class, and Approval of Notice to the Class. Dkt. No. 142. On January 28, 2013, Highmark filed its opposition to that motion. Dkt. No. 147.
- 2. On February 8, 2013, Royal Mile filed a motion for leave to submit a reply in further support of its motion to withdraw, and it attached its proposed reply as an exhibit. Dkt. Nos. 149, 149-1. Royal Mile's proposed reply brief contains crucial admissions that directly contradict what it said in its opening brief and confirm that the Court should deny its motion to withdraw.

3. Although the Court has not yet ruled on Royal Mile's motion for leave, Highmark requests permission to file a sur-reply so that it can address these key admissions and contradictions. That sur-reply is attached to this motion as Exhibit A.

Therefore, Highmark respectfully requests that the Court grant it leave to file the short sur-reply that is attached as Exhibit A. A proposed order is enclosed.

Dated: February 19, 2013

Respectfully submitted,

/s/ Margaret M. Zwisler
Margaret M. Zwisler (pro hac vice)
Jennifer L. Giordano (pro hac vice)
LATHAM & WATKINS LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Telephone: (202) 637-2200
Facsimile: (202) 637-2201

Email: <u>Margaret.Zwisler@lw.com</u> Email: Jennifer.Giordano@lw.com

Alfred C. Pfeiffer, Jr. (pro hac vice) LATHAM & WATKINS LLP 505 Montgomery Street, Suite 2000 San Francisco, CA 94111-6538 Telephone: (415) 391-0600 Facsimile: (415) 395-8095

Email: Al.Pfeiffer@lw.com

John G. Ebken GORDON & REES LLP 707 Grant Street, Suite 3800 Pittsburgh, PA 15219 Telephone: (412) 577-7400

Facsimile: (412) 347-5461 Email: jebken@gordonrees.com

Attorneys for Defendant Highmark Inc.

2435278

## **CERTIFICATE OF SERVICE**

The undersigned certifies that, on February 19, 2013, a true and correct copy of the foregoing HIGHMARK INC.'S MOTION FOR LEAVE TO FILE SUR-REPLY IN FURTHER OPPOSITION TO ROYAL MILE PLAINTIFFS' MOTION TO WITHDRAW PRELIMINARY APPROVAL OF SETTLEMENT was served on all counsel of record by the Court's electronic filing system (CM/ECF).

/s/ Jennifer L. Giordano Jennifer L. Giordano (pro hac vice)